

## TITLE 72

### WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

#### CHAPTER 13

#### EMPLOYMENT SECURITY LAW

72-1330B. WORKPLACE MISCONDUCT. (1) “Workplace misconduct” means conduct in connection with employment that willfully disregards the employer’s interest, willfully violates the employer’s reasonable rules, or disregards standards of behavior that the employer has a right to expect of its employees.

(2) A claimant’s conduct disregards a standard of behavior the employer has a right to expect of his employees when the conduct falls below the standard of behavior expected by the employer and the employer’s expectation was objectively reasonable. There is no requirement that the claimant’s conduct be willful, intentional, or deliberate. The claimant’s subjective state of mind is irrelevant.

(3) An employer’s expectation is objectively reasonable when it is communicated to the employee or flows naturally from the employment relationship. An expectation that flows naturally need not be communicated to an employee to be objectively reasonable.

(4) Mere inefficiency, unsatisfactory conduct, failure to meet the performance expectations of the employer because of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment.

(5) Except as provided in section 72-1366(5), conduct involving personal, non-job related behavior, is not workplace misconduct in connection with employment.

09.01.30.275. DISCHARGE.

02. Disqualifying Misconduct. To disqualify a claimant for benefits, misconduct must be connected with the claimant’s employment and involve one of the following:

a. Disregard of Employer’s Interest. A willful, intentional disregard of the employer’s interest.

b. Violation of Reasonable Rules. A deliberate violation of the employer’s reasonable rules.

c. Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant’s conduct be willful, intentional, or deliberate. The claimant’s subjective state of mind is irrelevant. The test for misconduct in “standard of behavior cases” is as follows:

i. Whether the claimant's conduct fell below the standard of behavior expected by the employer; and

ii. Whether the employer's expectation was objectively reasonable in the particular case.

03. Inability to Perform or Ordinary Negligence. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment.

04. Non-Job Related Conduct. If the claimant was discharged for conduct involving personal, nonjob related behavior, the discharge is not for misconduct connected with employment.